

The Court: Gentlemen, at the request of the United States attorney, I charge you: That persons who make or deal in substances or compositions alleged to be curative are in position to have superior knowledge and may be held to good faith in their statements. I trust that subject matter, in substance, has been set forth to you in the general charge, and that you will understand that the good faith or the reverse of the defendant is in issue in this case.

Mr. Bryan: Also, I think the court overlooked, it is also in the information "with wanton and reckless disregard of the truth or falsity", fraud may be inferred from the circumstances—

The Court: That is not the way to present points, Mr. Bryan. They should be written out and submitted to the court before the charge. I am not going to give the jury any more.

Mr. Bryan: I thought the court would cover those.

The Court: You may take the case, gentlemen of the jury, and render such a verdict as your consciences require.

On March 9, 1933, the jury returned a verdict of not guilty.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20728. Adulteration and misbranding of tincture of benzoin, lavender oil, sweet almond oil, eucalyptus oil, Carnatine red, Manderine orange, and coumarin; and adulteration of cassia oil, peppermint oil, sandalwood oil, and artificial mustard oil. U. S. v. Edward I. Lowell. Plea of guilty. Fine, \$800. (F. & D. no. 26569. I. S. nos. 2435, 3282 to 3289, incl., 3818, 4626, 4628.)

This case was based on the interstate shipment of several products, sold under names recognized in the United States Pharmacopoeia, that differed from the pharmacopoeial requirements; also of food-coloring agents, namely, Carnatine red and Manderine orange shade that contained sugar, and coumarin that contained undeclared acetanilid. The tincture of benzoin contained undeclared alcohol.

On July 21, 1932, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States an information against Edward I. Lowell, New York, N.Y., charging violation of the Food and Drugs Act. The information charged that the defendant had shipped from the State of New York into the State of New Jersey, on or about August 6, 1930, a quantity of tincture of benzoin that was adulterated; had shipped from New York into the State of Pennsylvania, between the dates of November 16, 1929, and July 22, 1930, quantities of oil lavender, oil sweet almond and oil eucalyptus, which were adulterated and misbranded, and a quantity each of oil cassia, oil peppermint, oil mustard artificial and oil sandalwood which were adulterated; had shipped from New York into South Carolina on or about August 15, 1930, a quantity of Carnatine red that was adulterated and misbranded, and had shipped into the State of Connecticut on or about June 5, and August 13, 1930, quantities of Manderine orange shade and coumarin that were adulterated and misbranded. The articles were labeled: "Edward I. Lowell Importer and Manufacturer * * * 113 Maiden Lane New York."

The information alleged that the tincture benzoin, oil lavender, oil cassia, oil sweet almond, oil eucalyptus, oil peppermint, oil mustard artificial, and oil sandalwood were adulterated in that they were sold under and by names recognized in the United States Pharmacopoeia, and differed from the standard of strength, quality, and purity as determined by the tests laid down in the said pharmacopoeia official at the time of investigation, and their own standards of strength, quality, and purity were not declared on the containers.

Misbranding of the tincture benzoin was alleged for the reason that the statement "Tincture Benzoin", borne on the label, was false and misleading, since it represented that the article consisted wholly of tincture benzoin, whereas it was composed in part of acetone; for the further reason that it was offered for sale under the name of another article; and for the further reason that it contained alcohol and the label failed to bear a statement of the proportion or quantity of alcohol contained therein.

Misbranding of the oil lavender flowers was alleged for the reason that the article was a product composed of oil or oils other than oil lavender flowers, prepared in imitation of oil lavender flowers, and was offered for sale and sold under the name of another article.

Misbranding of the oil sweet almond was alleged for the reason that the statement, "Oil Sweet Almond", borne on the label, was false and misleading, since it represented that the article consisted wholly of oil of sweet almond,

whereas it did not, but did consist in part of peach kernel oil and apricot kernel oil; and for the further reason that it was an imitation of, and was offered for sale and sold under the name of another article, namely, oil sweet almond.

Misbranding of the oil eucalyptus was alleged for the reason that the statement "Oil Eucalyptus Globulus", borne on the label, was false and misleading, since it represented that the article consisted wholly of oil of eucalyptus, whereas it did not, but did consist in part of safrol; and for the further reason that the article was an imitation of and was offered for sale and sold under the name of another article, namely, oil eucalyptus globulus.

Adulteration of the said coloring substances was alleged for the reason that sugar had been mixed and packed with the Carnatine red and Manderine orange shade, and acetanilid had been mixed and packed with the coumarin, so as to reduce and lower and injuriously affect the quality and strength of the articles, and had been substituted in part for the said articles.

Misbranding of the said coloring substances was alleged for the reason that the statements "Carnatine Red Certified", "Manderine Orange Shade Certified", and "Coumarine C. P.", borne on the labels, were false and misleading and for the further reason that the articles were labeled so as to deceive and mislead the purchaser, since the so-called Carnatine red certified and Manderine orange shade certified were not certified colors, and did not consist wholly of said coloring substances, but did consist in part of sugar, and the said coumarin C. P., did not consist wholly of coumarin C. P., but did consist in part of acetanilid. Misbranding of the said coloring substances was alleged for the further reason that they were offered for sale under the distinctive names of other articles. Misbranding of the said coumarin C. P., was alleged for the further reason that it contained acetanilid and the label failed to bear a statement of the quantity and proportion of acetanilid contained therein.

On August 24, 1932, the defendant entered a plea of guilty to the information, and the court imposed a fine of \$800.

R. G. TUGWELL, *Acting Secretary of Agriculture.*

20729. Misbranding of Zenar remedies. U. S. v. 5 Packages of Zenar No. 24 Whooping Cough Remedy, et al. Default decrees of condemnation and destruction. (F. & D. nos. 28660 to 28669, incl. Sample nos. 918-A, 920-A to 925-A, incl., 1119-A, 1122-A, 1123-A.)

These cases covered shipments of several proprietary medicines under the trade name "Zenar", variously numbered and each labeled as a remedy for a particular disease or ailment, e. g., "Zenar No. 24 Whooping Cough Remedy", etc. Analysis showed that the articles contained no ingredients or combinations of ingredients effective as remedies for the diseases for which they were put out.

On August 25, 1932, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States libels praying seizure and condemnation of 74 packages of Zenar remedies. The libel charged that the articles had been shipped in interstate commerce; that the shipments covered a period from February 26, 1931, to June 27, 1932; that they had been shipped by the Bika Biochemical Laboratories, from Philadelphia, Pa., to Los Angeles, Calif., where they remained in the original, unbroken packages, and that they were misbranded in violation of the Food and Drugs Act as amended.

Analyses of samples of the articles by this Department showed that Zenar No. 24 consisted of tablets composed of milk sugar, small proportions of extracts of plant drugs, sulphur (approximately 0.3 percent), and other inorganic material including magnesium, sodium and potassium phosphates and sulphates (0.2 percent); Zenar No. 26 consisted of tablets composed of milk sugar, sulphur (0.03 percent), small proportions of other inorganic material including sodium, potassium, and calcium sulphates and phosphates (0.3 percent), and a trace of an arsenic compound; Zenar No. 3 consisted of tablets composed of milk sugar, sulphur (0.02 percent), and other inorganic material including sodium, potassium, calcium, and iron sulphates and phosphates (0.2 percent); Zenar No. 19 consisted of tablets composed of milk sugar, sulphur (0.03 percent), and other inorganic substances including sodium, potassium and barium phosphates (0.1 percent); Zenar No. 18 consisted of tablets composed of milk sugar, sulphur (0.03 percent), other inorganic substances including sodium, potassium and calcium phosphates (0.1 percent), and a trace of an arsenic compound; Zenar No. 15 consisted of tablets composed of milk sugar,